LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U.S.
FILED
AUG 23 1957
JOHN T. FEY, Clerk

# Supreme Court of the United States

October Term, 1957 · No. 309

---

J. MINOR SULLIVAN, III

*Petitioner,*

*v.*

STATE OF NEW JERSEY,

*Respondent.*

---

## BRIEF OF RESPONDENT ON CERTIORARI

---

STANLEY E. RUTKOWSKI
*Mercer County Prosecutor*
Court House,
Trenton, New Jersey

JOHN J. BARRY
*First Assistant Prosecutor*

## TABLE OF CONTENTS


Opinion Below ..... 1

Jurisdiction ..... 1

Statement of Case ..... 2

Argument:

Summary ..... 3

Judicial errors by State Courts do not constitute violations of the Fourteenth Amendment ..... 4

Petitioner was accorded due process of law ..... 5

Conclusion ..... 5

Appendix C ..... 1a


## Cases Cited


Gryger v. Burke (Pa. 1948) 334 U. S. 728, rehearing denied 335 U. S. 837 ..... 3, 4

Saunders v. Shaw (La. 1917) 244 U. S. 317 ..... 4

SUPREME COURT OF THE UNITED STATES

October Term, 1957 No. 309

---

J. MINOR SULLIVAN, III

*Petitioner,*

*v.*

STATE OF NEW JERSEY,

*Respondent.*

---

## OPINION BELOW

The majority and dissenting opinions of the Supreme Court of New Jersey are reported at 24 N. J. 18, 130 A. 2d 610 (1957).

## JURISDICTION

Jurisdiction of this court is invoked under title 28 U. S. C. § 1257 (3).

## STATEMENT OF THE CASE

The Grand Jury in and for the County of Mercer in the State of New Jersey on December 23, 1952 returned an indictment against petitioner, J. Minor Sullivan, III, charging him with eight perjury offenses. (Appendix C, p. 1a) The trial court sitting without a jury found petitioner guilty on Counts 1, 2, 3, 4, 6, 7 and 8 and not guilty on Count 5. (Appendix B, p. 10b).

Upon appeal the New Jersey Supreme Court sustained the conviction as to counts 2, 4 and 6 reversing as to the Counts 1, 3, 7 and 8. (Appendix B, p. 33b).

Each of the Counts 2, 4 and 6 alleges that petitioner gave perjurious testimony in the case of State v. Cooper, et al tried by the New Jersey Superior Court and a jury during the September 1950 term of that Court. The petitioner, a physician, was called as a witness for the State to testify relative to a physical examination made by himself and a Dr. Corio regarding the condition of the defendants at the time they confessed to the crime of murder. (Appendix C, p. 1a, etc.). Petitioner's testimony developed into a distinct advantage to the Defense. (Appendix B, p. 13b and 19b).

To prove that such testimony was perjurious, the State introduced transcripts of petitioner's testimony in question, and of his testimony at a previous trial in the same cause; the testimony of Dr. Corio and various police officials present at the time petitioner made his physical examinations; and a sworn statement made by petitioner shortly subsequent to said examinations. (Appendix B, p. 2b to 9b incl.)

The State also introduced a tape recording of a radio statement by petitioner expressing his happiness with the result of the trial of State vs. Cooper, et al. Defense counsel admitted the statement to be harmless but criticized its relevancy. (Appendix B, p. 32b).

The defense in addition to the testimony of petitioner sought to introduce medical textbooks, allegedly relied

on by him in forming his medical opinions. That offer was denied under the sound discretion of the trial court. (Appendix B, p. 28b). The petitioner also sought to place in evidence certain purported memoranda which he claimed to have made at approximately the time of his examination of the defendants in State v. Cooper, et al. (Appendix B, p. 29b to 32b).

From the affirmation of the conviction by the New Jersey Supreme Court, the petitioner now applies to this Court for a review by way of Certiorari.

## ARGUMENT

### SUMMARY

Petitioner seeks the invocation of this Court of its power to review the proceedings below via vehicle of Certiorari, relying solely on "due process" clause of the Fourteenth Amendment. Petitioner complains of various alleged judicial errors below, including the failure to apply Federal Two Witness Rule and the exclusion and omission of certain proffered proofs together with a general allegation that the conduct of the trial court amounted to a denial of "due process".

### JUDICIAL ERRORS BY STATE COURTS DO NOT CONSTITUTE VIOLATIONS OF THE FOURTEENTH AMENDMENT

Judicial errors of state courts, even if actually made, are not proper grounds for review by this Court of judgments by state tribunals. *Grygers v. Burke (Pa. 1948) 334 U. S. 728, rehearing denied 335 U. S. 837.* Mr. Justice Jackson in that opinion quite pithely states the law on this point at page 731:

"We cannot treat a mere error of state law, if one occurred, as a denial of due process; * * *"

This clearly disposes of the argument of petitioner relative to the failure to apply the Federal Two Witness Rule and the various rulings on the admissability of evidence

It might be well to note in passing that of the cases cited by petitioner even at first blush the only such case worthy of the Court's consideration is *Saunders v. Shaw (La. 1917) 244 U. S. 317.* Even this case on closer inspection proves to be far off the point "sub judice". There the court was not concerned with the mere problem of admission or exclusion of evidence. It was confronted with the act of the Lousiana Supreme Court rendering judgment on appeal in reliance upon proffered proof not admitted into evidence by the trial court and accordingly not controverted by one of the defendants. The Court held that this in effect prevented that defendant from presenting his evidence on a crucial point and hence violative of the concept of fair play encompassed by the due process clause of the Fourteenth Amendment.

Such is not the instant case. The petitioner raises only questions of the trial court's correctness in rulings as to evidence and the applicable law of the case. Obviously, even if the contentions of petitioner are correct, the rulings complained of are clearly errors of state law and squarely within the purview of *Gryger v. Burke, (supra).*

## PETITIONER WAS ACCORDED DUE PROCESS OF THE LAW

The general allegation of petitioner claiming that the trial court's conduct resulted in a denial of "due process" can best be rebutted by the words of his own counsel. At the termination of the trial and after the State's summation, defense counsel expressed his confidence in the trial court, (Appendix B, p. 27b). Such an expression is not likely to have been made in the event the entire conduct of the trial had been a violation of the standard of fair play required by the Fourteenth Amendment.

In addition it is felt that the petitioner should be more specific and actually pinpoint violations of his rights by the courts below. This he has not done and in fact cannot do as the record amply discloses.

## CONCLUSION

For the above reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

STANLEY E. RUTKOWSKI
*Mercer County Prosecutor*

JOHN J. BARRY
*First Assistant Prosecutor*

# APPENDIX C

## INDICTMENT

**New Jersey Superior Court**

**Mercer County**

THE STATE OF NEW JERSEY )
)
VS. )
)
J. MINOR SULLIVAN III. )
*Defendant* )

I

The Grand Jurors of the State of New Jersey, for the County of Mercer, upon their oaths present, that at the sitting of the New Jersey Superior Court, Mercer County, held at the September term, 1950, January stated session, 1951, at the City of Trenton, in the County aforesaid, before the Honorable Ralph J. Smalley, then and now one of the judges of our Superior Court, a certain issue in due manner joined in the said court between the State of New Jersey and Ralph Cooper and Collis English and McKinley Forrest and John MacKenzie and James H. Thorpe and Horace Wilson upon a certain indictment for murder, in willfully, feloniously and of their malice aforethought killing and murdering one William Horner, came on to be tried, and was then and there in due form of law tried by a certain jury of the county, in due manner sworn and taken for that purpose; that and upon the trial of the said issue one J. Minor Sullivan III then and there, and on the fifth day of April, 1951, did appear and was produced as a witness for and on behalf of the said State of New Jersey and against the said Ralph Cooper and Collis English and McKinley Forrest and John MacKenzie and James H. Thorpe and Horace Wilson upon the trial of the said issue; that the said J. Minor Sullivan III then and there

was duly sworn and then and there did take his corporal oath upon the Holy Gospel of God, as such witness, which said oath was then and there administered to the said J. Minor Sullivan III by one Harry A. Frome, who was then and there the regularly appointed Court Clerk of said Court, duly qualified and acting as such, the said court, and the said Harry A. Frome then and there having competent authority in that behalf, that the evidence which he should give to the court and jury sworn between the said State of New Jersey and the said defendants Ralph Cooper and Collis English and McKinley Forrest and John MacKenzie and James H. Thorpe and Horace Wilson should be the truth, the whole truth and nothing but the truth; and upon the said J. Minor Sullivan III being so sworn as aforesaid, it then and there became material upon the trial of the said issue to inquire whether the said Ralph Cooper had understandingly and voluntarily admitted his participation in the said crime of murder, but that the said J. Minor Sullivan III while still under said oath as such witness on the sixth day of April, 1951, then and there knowingly, falsely, corruptly and wilfully did say, depose, swear and give in evidence among other things in substance and to the effect following that:

> "Q. And I ask you specifically was his condition such, that you, a trained medical observer, you felt from your experience that he was under the influence of drugs at that time? A. Yes, he appeared to be so.
>
> "Q. Doctor, as a result of having your previous testimony read to you for the purpose of refreshing your recollection, and directing your attention to the condition of Ralph Cooper as a result of your examination of February 10th, or the early morning

hours of the 11th, could you now state as to whether his condition was not caused by drugs? A. From the examination and observation of drowsiness and laziness as stated in the previous testimony, and redness of the eyes which indicated to me, suggested to me to ask the man if he had been smoking marijuanas, I say it could have been—it was caused by marijuanas."

whereas in truth and in fact, as he, the said J. Minor Sullivan, III, then and there well knew, the said Ralph Cooper was not under the influence of drugs and that he had not been smoking marijuana at said time of examination.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do say that thereby he, the said J. Minor Sullivan, III, then and there did commit willful and corrupt perjury in manner and form aforesaid, contrary to the provisions of R. S. 2:157-1, and against the peace of this State, the government and dignity of the same.

2

The Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that at the sitting of the New Jersey Superior Court, Mercer County, held at the September term, 1950, January stated session, 1951, at the City of Trenton, in the County aforesaid, before the Honorable Ralph J. Smalley, then and now one of the judges of our Superior Court, a certain issue in due manner joined in the said court between the State of New Jersey and Ralph Cooper and Collis English and McKinley Forrest and John MacKenzie and James H. Thorpe and Horace Wilson upon a certain indictment for murder, in willfully, feloniously and of their malice aforethought killing and murdering one William Horner, came on to be tried, and was then and there in due

form of law tried by a certain jury of the county, in due manner sworn and taken for that purpose; that at and upon the trial of the said issue one J. Minor Sullivan, III, then and there, and on the fifth day of April, 1951, did appear and was produced as a witness for and on behalf of the said State of New Jersey and against the said Ralph Cooper and Collis English and McKinley Forrest and John MacKenzie and James H. Thorpe and Horace Wilson upon the trial of the said issue; and the said J. Minor Sullivan, III, then and there was duly sworn and then and there did take his corporal oath upon the Holy Gospel of God, as such witness, which said oath was then and there administered to the said J. Minor Sullivan by one Harry A. Frome, who was then and there the regularly appointed Court Clerk of the said court, duly qualified and acting as such, the said court and the said Harry A. Frome then and there having competent authority in that behalf, that the evidence which he should give to the court and jury sworn between the said State of New Jersey and the said defendants Ralph Cooper and Collis English and McKinley Forrest and John MacKenzie and James H. Thorpe and Horace Wilson should be the truth, the whole truth and nothing but the truth; and upon the said J. Minor Sullivan, III being so sworn as aforesaid, it then and there became material upon the trial of the said issue to inquire whether the said Collis English had understandingly and voluntarily admitted his participation in the said crime of murder, but that the said J. Minor Sullivan, III, while still under said oath as such witness on the sixth day of April, 1951, then and there knowingly, falsely, corruptly and willfully did say, depose, swear and give in evidence among other things in substance and to the effect following that:

"Q. Now, sir, how did he appear to you? A. Well, English appeared just a little mumbly or a little

confused, you might say.

Q. Didn't he appear highly nervous to you? A. Yes, he was nervous.

Q. You said that twice, now, sir. I asked you specifically, didn't he appear highly nervous to you? A. He was highly nervous."

whereas in truth and in fact, as he, the said J. Minor Sullivan, III, then and there well knew, the said Collis English was not mumbly and confused and was not highly nervous at the time of examination.

And so the Grand Jurors aforesaid, upon their oaths aforesaid, do say that thereby he, the said J. Minor Sullivan, III, then and there did commit willful and corrupt perjury in manner and form aforesaid, contrary to the provisions of R. S. 2:157-1, and against the peace of this State, the government and dignity of the same.

3

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that at the sitting of the New Jersey Superior Court, Mercer County, held at the September term, 1950, January stated session, 1951, at the City of Trenton, in the County aforesaid, before the Honorable Ralph J. Smalley, then and now one of the judges of our Superior Court, a certain issue in due manner joined in the said court between the State of New Jersey and Ralph Cooper and Collis English and McKinley Forrest and John MacKenzie and James H. Thorpe and Horace Wilson upon a certain indictment for murder, in willfully, feloniously and of their malice aforethought killing and murdering one William Horner, came on to be tried, and was then and there in due form of law tried by a certain jury of the county, in due manner sworn and taken for that purpose; that at and upon the trial of the said issue one J. Minor Sullivan, III then and there, and on the fifth day of April,

1951, did appear and was produced as a witness for and on behalf of the said State of New Jersey and against the said Ralph Cooper and Collis English and McKinley Forrest and John MacKenzie and James H. Thorpe and Horace Wilson upon the trial of the said issue; that the said J. Minor Sullivan III then and there was duly sworn and then and there did take his corporal oath upon the Holy Gospel of God, as such witness, which said oath was then and there administered to the said J. Minor Sullivan III by one Harry A. Frome, who was then and there the regularly appointed Court Clerk of said court, duly qualified and acting as such, the said court and the said Harry A. Frome then and there having competent authority in that behalf, that the evidence which he should give to the court and jury sworn between the said State of New Jersey and the said defendants Ralph Cooper and Collis English and McKinley Forrest and John MacKenzie and James H. Thorpe and Horace Wilson should be the truth, the whole truth and nothing but the truth; and upon the said J. Minor Sullivan III being so sworn as aforesaid, it then and there became material upon the trial of the said issue to inquire whether the said McKinley Forrest had understandingly and voluntarily admitted his participation in the said crime of murder, but that the said J. Minor Sullivan, III, while still under said oath as such witness, on the sixth day of April, 1951, then and there knowingly, falsely, corruptly and willfully did say, depose, swear and give in evidence among other things in substance and to the effect following that:

"Q. Doctor, could a severe shock to the mind produce a state of excitement that you observed in McKinley Forrest? A. Yes, it could.

"Q. A psychic impact, could that produce it? A. Yes.

"Q. And a severe shock producing this moderate stage of excitement in between maniacal, as you

describe it, could there also be in that condition an amnesic state? A. Yes. Yes.

"The Court: When you answer that question, Doctor, are you giving it as a reasonable probability or a mere possibility?

"The Witness: I am giving it on the basis of a psychic depression, you have a loss of memory in that situation.

"The Court: Yes, I think I understand that, but, is it your testimony—and I don't think I follow you—are you saying that this man's condition was like something that might be caused by this impact or possibility of an impact, or are you saying he was in such a condition, and can you testify as to a reasonable probability that he was in that condition?

"The Witness: In explaining it, I would say he was so afraid he couldn't tell just what was going on, he was excited.

"Q. Are there drugs which could have produced this condition of excitement to which you referred? A. Yes."

whereas in truth and if fact, as he, the said J. Minor Sullivan III then and there well knew, the said McKinley Forrest was not suffering from severe shock and was not in an amnesic state due to a psychic impact; and was not in a state of psychic depression with a loss of memory and that he was not so afraid he couldn't tell what was going on and was not under the influence of any drugs at the time of examination.

And so the Grand Jurors aforesaid, upon their oaths aforesaid, do say that thereby he, the said J. Minor Sullivan, III, then and there did commit willful and corrupt perjury in manner and form aforesaid, contrary to the provisions of R. S. 2:157-1, and against the peace of this State, the government and dignity of the same.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that at the sitting of the New Jersey Superior Court, Mercer County, held at the September term, 1950, January stated session, 1951, at the City of Trenton, in the County aforesaid, before the Honorable Ralph J. Smalley, then and now one of the judges of our Superior Court, a certain issue in due manner joined in the said court between the State of New Jersey and Ralph Cooper and Collis English and McKinley Forrest and John MacKenzie and James H. Thorpe and Horace Wilson upon a certain indictment for murder, in willfully, feloniously and of their malice aforethought killing and murdering one William Horner, came on to be tried, and was then and there in due form of law tried by a certain jury of the county, in due manner sworn and taken for that purpose; that at and upon the trial of the said issue one J. Minor Sullivan, III, then and there and on the fifth day of April, 1951, did appear and was produced as a witness for and on behalf of the said State of New Jersey and against the said Ralph Cooper and Collis English and McKinley Forrest and John MacKenzie and James H. Thorpe and Horace Wilson upon the trial of the said issue; that the said J. Minor Sullivan, III, then and there was duly sworn and then and there did take his corporal oath upon the Holy Gospel of God, as such witness, which said oath was then and there administered to the said J. Minor Sullivan, III by one Harry A. Frome, who was then and there the regularly appointed Court Clerk of said court, duly qualified and acting as such, the said court and the said Harry A. Frome then and there having competent authority in that behalf, that the evidence which he should give to the court and jury sworn between the said State of

New Jersey and the said defendants Ralph Cooper and Collis English and McKinley Forest and John MacKenzie and James H. Thorpe and Horace Wilson should be the truth, the whole truth and nothing but the truth; and upon the said J. Minor Sullivan, III being so sworn as aforesaid, it then and there became material upon the trial of the said issue to inquire whether the said John MacKenzie had understandingly and voluntarily admitted his participation in the said crime of murder, but that the said J. Minor Sullivan, III, while still under said oath as such witness, on the sixth day of April, 1951, when and there knowingly, falsely, corruptly and willfully did say, depose, swear and give in evidence among other things in substance and to the effect following that:

"Q. Was he nervous? A. Yes, I would say he was nervous.

"Q. Now, aside from his very nervous state and condition that he was in, what else did you notice about MacKenzie? I don't mean the scar on his cheek which was an old scar, but what other symptoms or appearance did MacKenzie have? A. As far as I recall, he appeared nervous, moderately excited.

"Q. May I not ask you, Doctor Sullivan, the condition that MacKenzie was in when you saw him in a nervous and excitable state, could that condition not be caused by a person who had been administered or to whom had been administered a drug as long as six or eight hours before? A. Yes.

"Q. Now, under those circumstances, Doctor, I now inquire as to whether or not as you indicated yesterday, the insertion, or rather the taking of a drug orally, particularly I refer to orally, might not have the effect mentioned by you yesterday even

more pronounced than if a drug had been, for example, administered by a hypodermic syringe, because the oral administration cannot be accurately calculated while the hypodermic syringe administration of drugs can be accurately calculated?

"Mr. Alexander: I don't believe, Doctor, you answered the last question.

A. Yes; I said yes.

"Q. The answer was yes? A. Yes.

"Q. And Doctor, a drug such as sodium amytol or sodium pentothal, might have an effect lasting upon a person using the drug even as long as a day or two after the use, might it not? A. Sodium amytol is a moderately long-acting drug. So, it could be.

"Q. Now, Doctor, you examined MacKenzie, didn't you? A. Yes, your Honor.

"Q. Can you or can you not tell this Court from that examination as to whether or not he was under the influence of any drug or any form? A. Your Honor, I would say from the symptoms manifested, being relatively nervous, a drug could have been used.

"Q. Is that speculative or conjectural? A. That is my observation that from the condition at the time I examined him, being coherent, that is answering and orientated to where he was in answering the questions, yet being highly nervous, it seems that he was being controlled. I mean, that is—

"Q. Now as to Jack MacKenzie, or John MacKenzie, Doctor, would you repeat what his appearance seemed to you at the time that you saw him on the night of the 12th? A. If I recall I stated that Jack MacKenzie appeared to be rela-

tively calm, but nervous, that he appeared to be in a controlled state, as if having had a drug. That is to the best of my recollection, and his physical examination was essentially negative other than that.

"Q. Did you ask Jack MacKenzie whether he had taken any drugs? A. I don't recall.

"Q. And if no drugs had been used, what would you say could have brought about that appearance?

"Mr. Alexander: I just make an objection for the record, your Honor. That is my client.

"The Court: All right.

A. I don't know of any other situation that might put a person in a controlled state other than the hypnosis."

whereas in truth and in fact, as he, the said J. Minor Sullivan, III, then and there well knew, the said John MacKenzie was not nervous and moderately excited and was not drugged and was not in a controlled state and was not in an hypnotic state, at said time of examination.

And so the Grand Jurors aforesaid, upon their oaths aforesaid, do say that thereby he, the said J. Minor Sullivan, III, then and there did commit willful and corrupt perjury in manner and form aforesaid, contrary to the provisions of R. S. 2:157-1, and against the peace of this State, the government and dignity of the same.

5

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that at the sitting of the New Jersey Superior Court, Mercer County, held at the September term, 1950, January stated session, 1951, at the City of Trenton, in the County aforesaid, before

the Honorable Ralph J. Smalley, then and now one of the judges of our Superior Court, a certain issue in due manner joined in the said court between the State of New Jersey and Ralph Cooper and Collis English and McKinley Forrest and John MacKenzie and James H. Thorpe and Horace Wilson upon a certain indictment for murder, in willfully, feloniously and of their malice aforethought killing and murdering one William Horner, came on to be tried, and was then and there in due form of law tried by a certain jury of the county, in due manner sworn and taken for that purpose; that at and upon the trial of the said issue one J. Minor Sullivan, III, then and there, and on the fifth day of April, 1951, did appear and was produced as a witness for and on behalf of the said State of New Jersey and against the said Ralph Cooper and Collis English and McKinley Forrest and John MacKenzie and James H. Thorpe and Horace Wilson upon the trial of the said issue; that the said J. Minor Sullivan, III, then and there was duly sworn and then and there did take his corporal oath upon the Holy Gospel of God, as such witness, which said oath was then and there administered to the said J. Minor Sullivan, III by one Harry A. Frome, who was then and there the regularly appointed Court Clerk of said court, duly qualified and acting as such, the said court and the said Harry A. Frome then and there having competent authority in that behalf, that the evidence which he should give to the court and jury sworn between the said State of New Jersey and the said defendants Ralph Cooper and Collis English and McKinley Forrest and John MacKenzie and James H. Thorpe and Horace Wilson should be the truth, the whole truth and nothing but the truth; and upon the said J. Minor Sullivan, III being so sworn as aforesaid, it then and there became material upon the trial of the said issue to inquire whether the said James H. Thorpe had under-

standingly and voluntarily admitted his participation in the said crime of murder, but that the said J. Minor Sullivan, III while still under said oath as such witness, on the sixth day of April, 1951, then and there knowingly, falsely, corruptly and willfully did say, depose, swear and give in evidence among other things in substance and to the effect following that:

"Q. Yes, Thorpe. A. As far as I recall, he was calm, kind of depressed like, and he was just as I say, he appeared in a suggestible state, I would say.

Q. Thorpe was? A. James Thorpe.

Q. From your observation and your experience could you attribute to any cause the appearance of Thorpe, that he was in a depressed state and in a susceptible and a suggestive state? A. Yes, I have seen individuals who have been treated very kindly, and in that type of state through making what you might say making promises to them, I will give you a good example which would be better. A man raises chickens on a farm, and he picks them up and brings them to his coop and in the coop he tends them and feeds them corn for a week. And he could go out and as long as he feeds the corn he can pick those chickens up. Then one day he decides to bring them to town, and he can pick that same chicken up and put him in the basket, and he can put them in the truck without any tightening of the chickens, and all because they are in a calm state and have been treated kindly. And that is all I can say.

Q. How can you make that applicable to a human being, I can understand chickens. A. I can make that applicable in that you can treat a person so kind that they trust you.

Q. That they trust you? A. Yes.

Q. And that you say he was calm, and you felt that he had been promised something, is that what you said before? A. I said that was one of my explanations; you could make a promise and you could treat a person kind—

The Court: That isn't answering the question, Doctor.

The Witness: Well, I would say yes, he had been promised something.

The Court: How do you know that?

The Witness: From the answer that he gave me, your Honor, when I asked him, 'Are you going to sign this?' And he said, 'Yes.' And I said, 'If you are not guilty, why are you going to sign it? And he said, 'Well, I am just going to get a few days or a month, and I am going to sign it.' And that is my first indication that he may have been promised something, your Honor."

whereas in truth and in fact, as he, the said J. Minor Sullivan, III, then and there well knew, the said James H. Thorpe was not in a depressed and susceptible and suggestive state and had not been promised anything, at said time of examination.

And so the Grand Jurors aforesaid, upon their oaths aforesaid, do say that thereby he, the said J. Minor Sullivan, III, then and there did commit willful and corrupt perjury in manner and form aforesaid, contrary to the provisions of R. S. 2:157-1, and against the peace of this State, the government and dignity of the same.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that at the sitting of the New Jersey Superior Court, Mercer County, held at the September term, 1950, January stated session, 1951, at the City of Trenton, in the County aforesaid, before the Honorable Ralph J. Smalley, then and now one of the judges of our Superior Court, a certain issue in due manner joined in the said court between the State of New Jersey and Ralph Cooper and Collis English and McKinley Forrest and John MacKenzie and James H. Thorpe and Horace Wilson upon a certain indictment for murder, in willfully, feloniously and of their malice aforethought killing and murdering one William Horner, came on to be tried, and was then and there in due form of law tried by a certain jury of the county, in due manner sworn and taken for that purpose; that at and upon the trial of the said issue one J. Minor Sullivan, III, then and there, and on the fifth day of April, 1951, did appear and was produced as a witness for and on behalf of the said State of New Jersey and against the said Ralph Cooper and Collis English and McKinley Forrest and John MacKenzie and James H. Thorpe and Horace Wilson upon the trial of the said issue; that the said J. Minor Sullivan, III, then and there was duly sworn and then and there did take his corporal oath upon the Holy Gospel of God, as such witness, which said oath was then and there administered to the said J. Minor Sullivan, III by one Harry A. Frome, who was then and there the regularly appointed Court Clerk of said court, duly qualified and acting as such, the said court and the said Harry A. Frome then and there having competent authority in that behalf, that the evidence which he should give to

the court and jury sworn between the said State of New Jersey and the said defendants Ralph Coope. and Collis English and McKinley Forrest and John MacKenzie and James H. Thorpe and Horace Wilson should be the truth, the whole truth and nothing but the truth; and upon the said J. Minor Sullivan, III, so sworn as aforesaid, it then and there became material upon the trial of the said issue to inquire whether the said Collis English had understandingly and voluntarily admitted his participation in the said crime of murder, but that the said J. Minor Sullivan, III while still under said oath as such witness, on the twenty-fifth day of April, 1951, then and there knowingly, falsely, corruptly and wilfully did say, depose, swear and give in evidence among other things in substance and to the effect following that:

"Q. When Collis English was brought in, will you tell us in the minutest detail his condition, his demeanor, his attitude at that time? A. I observed Collis English after I examined him with his clothes off, to be a little mumbly, a little confused, and also to have a cardiac murmur. The confusion and the cardiac murmur from my personal diagnosis I made a psychoneurosis associated with the cardiac condition brought on by stress, which is very classical and is called in Cecil's Neurocirculatory Asthenisia. You might look it up on page 1284, I believe, in which he is a typical example of it.

"Q. In your opinion, from your observation of him, would you say he was acting of his own free will? A. Well, he was confused mumbly, which would bring about a confusional state as far as—

"Q. He was not very reliable, was he, Doctor? A. I would say not.

"Q. He was easily suggestive to pressure, wasn't he, Doctor, in the condition in which you saw him? A. Cardiac patients have one outstanding symptom, they would like to keep anything from making their heart worse, so they will go along and testify to anything you suggest.

"Q. So, Doctor, when a person suffering from the condition which you found in Collis English is subjected to pressure such as you did this and you did that, and this and that and other things, isn't it a fact a person constitutionally fitted as Collis English was, according to your diagnosis, that he can be suggested to from one step to another, implicating himself more and more? A. I would say yes.

"Q. And notwithstanding that the implication might be baseless in fact as to himself, to avoid this pressure which because of his constitutional failing of the debility of his heart, in order to avoid that he would admit such facts, would he not, Doctor? A. Highly suggestible.

"Q. And isn't it a fact, Doctor, bearing in mind the facts which I have embodied in that hypothetical question, and your findings that Collis English, a person in the condition in which you found him could not be said to have been acting of his own free will at the time he signed the confession and at the time you examined him? A. Under mental pressure he would not be acting of his own free will.

"The Court: As you found him?

"The Witness: As I found him, acting with mental pressure. He was confused, and with his cardiac condition, his mumbling, I would say it was the result of pressure."

whereas in truth and in fact, as he, the said J. Minor Sullivan, III, then and there well knew, the said Collis English was not acting under mental pressure and was not easily suggestive to pressure and was not confused and mumbly and was not in a state of psycho-neurosis and the cardiac condition did not place him in a suggestible state and was acting of his own free will at the time he signed the confession and was reliable at said time of examination.

And so the Grand Jurors aforesaid, upon their oaths aforesaid, do say that thereby he, the said J. Minor Sullivan, III, then and there did commit willful and corrupt perjury in manner and form aforesaid, contrary to the provisions of R. S. 2:157-1, and against the peace of this State, the government and dignity of the same.

7

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that at the sitting of the New Jersey Superior Court, Mercer County, held at the September term, 1950, January stated session, 1951, at the City of Trenton in the County aforesaid, before the Honorable Ralph J. Smalley, then and now one of the judges of our Superior Court, a certain issue in due manner joined in the said court between the State of New Jersey and Ralph Cooper and Collis English and McKinley Forrest and John MacKenzie and James H. Thorpe and Horace Wilson upon a certain indictment for murder in wilfully, feloniously and of their malice aforethought killing and murdering one William Homer, came on to be tried, and was then and there in due form of law tried by a certain jury of the county, in due manner sworn and taken for that purpose; that at and upon the trial of the said issue one J. Minor Sullivan,

III, then and there, and on the fifth day of April, 1951, did appear and was produced as a witness for and on behalf of the said State of New Jersey and against the said Ralph Cooper and Collis English and McKinley Forrest and John MacKenzie and James H. Thorpe and Horace Wilson upon the trial of the said issue; that the said J. Minor Sullivan, III, then and there was duly sworn and then and there did take his corporal oath upon the Holy Gospel of God, as such witness, which said oath was then and there administered to the said J. Minor Sullivan, III, by one Harry A. Frome, who was then and there the regularly appointed Court Clerk of said court, duly qualified and acting as such, the said Harry A. Frome then and there having competent authority in that behalf that the evidence which he should give to the court and jury sworn between the said State of New Jersey and the said defendants Ralph Cooper and Collis English and McKinley Forrest and John MacKenzie and James H. Thorpe and Horace Wilson should be the truth, the whole truth and nothing but the truth; and upon the said J. Minor Sullivan, III, so sworn as aforesaid, it then and there became material upon the trial of the said issue to inquire whether the said McKinley Forrest had understandingly and voluntarily admitted his participation in the said crime of murder, but that the said J. Minor Sullivan, III, while still under said oath as such witness, on the twenty-fourth day of April, 1951, then and there knowingly, falsely, corruptly and willfully did say, depose, swear and give in evidence among other things in substance and to the effect following that:

"Q. And would you say that this excitement which you noticed, as you described it, could have been a form of hysteria? A. Yes.

Q. Do you think that it was? A. A stage of it,

I would say.

Q. A stage of hysteria? A. Yes.

Q. Do you recall stating that it was almost impossible for him to remove his own clothing during your examination? A. That I recall, yes.

Q. You do recall? A. Yes.

Q. That it was almost impossible for him to remove his own clothes? A. It was impossible.

Q. It was impossible. Who helped him? A. Dr. Corio and I.

Q. Now, was that difficulty because of his condition that you have described? A. Yes.

Q. When, during the time that you saw him, was this excitement most noticeable? A. It was all during the time I was observing him.

Q. Well, let me see if I can refresh your recollection, Doctor, the Court was talking to you when you were testifying on April 6, 1951; and the Court said this to you at page 2634, Volume XV; your remark which I believe prompted the Court's query was, 'I am giving it on the basis of a psychic depression, you have a loss of memory in that situation.'

The Court then said to you, 'Yes, I think I understand that; but, is it your testimony—and I don't think I follow you—are you saying that this man's condition was like something that might be caused by this impact or possibility of an impact or are you saying he was in such a condition, and can you testify as to a reasonable probability that he was in that condition?'

Then your remark was, 'In explaining it, I would say he was afraid, he couldn't tell just what was going on, he was excited.'

Is that what your testimony was? A. Yes, I recall that.

Q. And it doesn't differ from that today, does it? A. No.

Q. That is your present recollection? A. Yes.

Q. And I believe I have asked you, and I will ask you again, could an intense emotional shock cause this state of excitement which you observed? A. Yes.

Q. And is it true that attendant upon this condition that you observed in McKinley Forrest, there could be an amnesia or a forgetting of the entire situation? A. It is a part of it, a phase of depression, forgetting, loss of memory is a phase of it. So, it could be an amnesia.

Q. That is normal with just this condition that you observed in McKinley Forrest at that time, isn't it? A. Natural, I mean. Yes.

Q. Naturally, I am sorry. In order that we can have it a little clearer, amnesia is a natural condition attendant upon the state of excitement in which you observed McKinley Forrest? A. Loss of memory is, yes.

Q. Well, then, Doctor, from a medical viewpoint will you correct me on loss of memory and amnesia? A. It is the same thing. It is a slow symptom.

Q. Now, could a drug have produced this condition which you saw? A. Yes.

Q. As I understand your testimony, a severe emotional shock could have produced this condition? A. Yes.

Q. Sometimes we refer to severe emotional shock as a psychic impact, is that correct? A. Yes.

Q. They mean about the same thing, don't they? A. Yes.

Q. Psychic impact and severe emotional shock? A. Yes, it does.

> Q. Could a three-grain capsule of sodium amytol taken by McKinley Forrest at some time that afternoon between 3:30 and 4 o'clock have produced the condition which you saw? A. Your Honor, I would like to explain; yes, it could, and why I say 'yes' is because I use the same type of drug in the maternity ward in the hospital. I give girls an injection or by mouth tablets when they go in, and maybe a couple of hours later, four or five hours later they don't even know I have been there; maybe six or seven hours later I deliver them, they don't even know I have been there. So, it could produce it."

whereas in truth and in fact, as he, the said J. Minor Sullivan, III, then and there well knew, the said McKinley Forrest was not in a state of excitement bordering on hysteria and was not suffering from loss of memory and that he did remove his own clothing and was not so afraid that he couldn't tell what was going on and was not in a state of excitement caused by an intense emotional shock and was not in a state of amnesia and was not under the influence of drugs, at said time of examination.

And so the Grand Jurors aforesaid, upon their oaths aforesaid, do say that thereby he, the said J. Minor Sullivan, III, then and there did commit willful and corrupt perjury in manner and form aforesaid, contrary to the provisions of R. S. 2:157-1, and against the peace of this State, the government and dignity of the same.

8

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that at the sitting of the New Jersey Superior Court, Mercer County, held at the

*Appendix C*
*Indictment*

September term, 1950, January stated session, 1951, at the City of Trenton, in the County aforesaid, before the Honorable Ralph J. Smalley, then and now one of the judges of our Superior Court, a certain issue in due manner joined in the said court between the State of New Jersey and Ralph Cooper and Collis English and McKinley Forrest and John MacKenzie and James H. Thorpe and Horace Wilson upon a certain indictment for murder, in willfully, feloniously and of their malice aforethought killing and murdering one William Horner, came on to be tried, and was then and there in due form of law tried by a certain jury of the county, in due manner sworn and taken for that purpose; that at and upon the trial of the said issue one J. Minor Sullivan, III, then and there, and on the fifth day of April, 1951, did appear and was produced as a witness for and on behalf of the said State of New Jersey and against the said Ralph Cooper and Collis English and McKinley Forrest and John MacKenzie and James H. Thorpe and Horace Wilson upon the trial of the said issue; that the said J. Minor Sullivan, III, then and there was duly sworn and then and there did take his corporal oath upon the Holy Gospel of God, as such witness, which said oath was then and there administered to the said J. Minor Sullivan, III by one Harry A. Frome, who was then and there the regularly appointed Court Clerk of said court, duly qualified and acting as such, the said court and the said Harry A. Frome then and there having competent authority in that behalf that the evidence which he should give to the court and jury sworn between the said State of New Jersey and the said defendants Ralph Cooper and Collis English and McKinley Forrest and John MacKenzie and James H. Thorpe and Horace Wilson should be the truth, the whole truth and nothing but the truth;

and upon the said J. Minor Sullivan, III, so sworn as aforesaid, it then and there became material upon the trial of the said issue to inquire whether the said McKinley Forrest had understandingly and voluntarily admitted his participation in the said crime of murder, but that the said J. Minor Sullivan, III, while still under said oath as such witness, on the twenty-fifth day of April, 1951, then and there knowingly, falsely, corruptly and willfully did say, depose, swear and give in evidence among other things in substance and to the effect following that:

> "Q. Isn't it true that in anxiety stage where this marked degree of fear is present that a person speaks unguardedly and doesn't care what they say? A. I would say yes.
>
> "Q. They are liable to make unconsidered statements about matters of great importance, are they not? A. Correct."

whereas in truth and in fact, as he, the said J. Minor Sullivan, III, then and there well knew, the said McKinley Forrest was not in a state of anxiety superinduced by a marked degree of fear, and that he did not speak unguardedly and make considered statement at said time of examination.

And so the Grand Jurors aforesaid, upon their oaths aforesaid, do say that thereby he, the said J. Minor Sullivan, III, then and there did commit willful and corrupt perjury in manner and form aforesaid, contrary to the provisions of R. S. 2:157-1, and against the peace of this State, the government and dignity of the same.

Endorsed

.....

MARIO H. VOLPE
*County Prosecutor*

Returned December 23, 1952